

Entered on Docket

April 21, 2020

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: April 21, 2020

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
)
- and -) Chapter 11
)
PACIFIC GAS AND ELECTRIC COMPANY,) Jointly Administered
)
Debtors.)
)
 Affects PG&E Corporation)
 Affects Pacific Gas and)
Electric Company)
 Affects both Debtors)
)
** All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)*)

ORDER REGARDING RULE 2004 APPLICATIONS FILED BY THE
OFFICIAL COMMITTEE OF TORT CLAIMANTS

On February 19, 2020, the Official Committee of Tort Claimants (the "TCC") filed a Motion to Establish Procedures for Discovery Preceding Plan Confirmation (dkt. 5840) indicating that it had issued approximately 100 subpoenas to certain vendors that "PG&E relied on to complete much of its vegetation and asset management, which may have contributed to the fires at

1 issue" in this bankruptcy case." *Id.* at ECF pg. 3, lines 18-21.
2 Debtors had previously agreed to assign their claims against
3 these vendors to the TCC as part of a mediated settlement when
4 their Plan of Reorganization becomes effective. The TCC sought
5 discovery from the vendors pursuant to Federal Rule of Civil
6 Procedure 45.

7 Various vendors objected to the motion or sought to quash
8 subpoenas (*see, e.g.*, objection by Outback Contractors [dkt.
9 5998] and motion to quash by Black & Veatch [dkt. 5896]). These
10 responses focused primarily on the nature and limits of Rule 45.
11 At a hearing on March 10, 2020, the court informed counsel for
12 the TCC that it could not utilize Rule 45 to obtain its
13 requested information, but should instead proceed under Fed. R.
14 Bankr. P. 2004 and that any objections would be addressed at
15 that time.

16 On or about March 17, 2020, the TCC filed various
17 applications for entry of orders authorizing the service of
18 subpoenas pursuant to that rule (the "Initial Rule 2004
19 Applications"); the court entered orders approving the Initial
20 Rule 2004 Applications on March 24 and March 25, 2020 (dkts.
21 6466-6474 and 6490). On April 1, 2020, both the Official
22 Committee of Unsecured Creditors ("OCUC") and the Debtors filed
23 letters objecting to these applications and requesting a
24 telephonic hearing (dkts. 6579 and 6581, respectively).

25 The TCC filed a responsive letter [dkt. 6585] on April 1,
26 2020 (dkt. 6585); on the following day, it filed ten more Rule
27 2004 applications (dkts. 6601-6610) (the "Subsequent Rule 2004
28 Applications"). For the reasons set forth below, the court will

1 enter the orders approving the Subsequent Rule 2004 Applications
2 as well.

3 The court disagrees with Debtor and the OCUC that the TCC's
4 Rule 2004 requests are premature. The scope of Rule 2004
5 examinations is broad and may relate to the acts, conduct or
6 property and liabilities of a debtor, or to any matter which may
7 affect the administration of the debtor's estate. Fed. R.
8 Bankr. P. 2004(a). Even though Debtors have not yet assigned
9 their potential causes of action against various vendors to the
10 TCC, the claims are still property of the estate, and discovery
11 is necessary to determine if any claims may be subject to
12 limitations or other defenses upon assignment to the TCC.

13 As the Bankruptcy Appellate Panel for the Ninth Circuit
14 recently observed, Rule 2004 is the basic discovery device in
15 bankruptcy cases and allows broad examination relating to "the
16 acts, conduct, or property or to the liabilities and financial
17 condition of the debtor, or to any matter which may affect the
18 administration of the debtor's estate, or to the debtor's right
19 to a discharge." *In re Mastro*, 585 B.R. 587, 596 (9th Cir. BAP
20 2018), quoting Fed. R. Bankr. P. 2004 and citing *In re Subpoena
21 Duces Tecum*, 461 B.R. 823, 829 (Bankr. C.D. Cal. 2011). The BAP
22 further noted:

23 As the Rule's text makes clear, the scope of a
24 Rule 2004 examination is "unfettered and broad"; the
25 rule essentially permits a "fishing expedition." *In
26 re Subpoena Duces Tecum*, 461 B.R. at 829 (quoting
27 and citing *In re GHR Energy Corp.*, 33 B.R. 451, 453-
28 54 (Bankr. D. Mass 1983)). And the examination may
"extend to third parties who have had dealings with
the debtor." *In re Fin. Corp. of Am.*, 119 B.R. 728,
733 (Bankr. C.D. Cal. 1990).

1 Mastro, 585 B.R. at 597.

2 Here, the TCC is seeking to determine - among other things
3 - potential defenses (such as statutes of limitations) with
4 respect to claims to be assigned to it upon confirmation.
5 Consequently, the requested Rule 2004 examinations pertain to
6 the present and future value and validity of such claims.

7 In light of the foregoing, the court will sign the orders
8 approving the Subsequent Rule 2004 Applications and will not
9 vacate the orders granting the Initial Rule 2004 Applications.
10 The court will consider any specific objections of the parties
11 who are the subject of such Rule 2004 examinations in the
12 context of a discovery dispute conference as set forth in
13 section III(F) of the court's Practices and Procedures
14 available at

15 [http://www.canb.uscourts.gov/procedure/montali/judge-montalis-](http://www.canb.uscourts.gov/procedure/montali/judge-montalis-practices-and-procedures)
16 practices-and-procedures.

17 ****END OF ORDER****